Supreme Court, U.S.
FILED

98 1816 MAY 11 1999

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1998

Gertrude Davis Gorod

Petitioner,

v.

EDITH TABACHNICK

Respondent.

Petition For Writ Of Certiorari
To The Massachusetts Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

Gertrude Davis Gorod
371 Bryant Street
Malden, Massachusetts 02148
(781) 322-8223

44pp

ISSUES PRESENTED

I.

Should this Court grant Certiorari when it involves a novel issue such as losses of Inheritance Taxes from both the United States Government and the Commonwealth of Massachusetts.

II.

Should this Court grant Certiorari in order to protect the petitioner's United States Constitutional Rights.

III.

Should this Court grant certiorari to save the Commonwealth of Massachusetts' Judicial system from failure.

The Commonwealth of Massachusetts is not enforcing Massachusetts General Laws with special emphasis on Crimes Against The Elderly.

IV.

Should this Court grant Certiorari to determine whether the court has a judiciary duty to determine who are legal/not legal heirs to estates.

V.

Should this Court grant Certiorari when the Massachusetts inferior courts erred in its decision.

VI.

Should this Court grant Certiorari when the public interest will be in jeopardy if the Massachusetts Court's decision is left undisturbed.

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Petitioner, Gertrude Davis Gorod respectfully prays that a Writ of Certiorari issue to review decision of the Massachusetts Supreme Judicial Court.

Petitioner, Gertrude Davis Gorod respectfully moves the Honorable Court to vacate the Massachusett Court's decision or grant any other appropriate relief.

OPINIONS BELOW

The Massachusetts Middlesex Superior Court dismissed the action (APP. P. 20).

The Appeals Court for the Commonwealth of Massachusetts upheld the lower court's decision (App. P. 22).

The Massachusetts Supreme Judicial Court denied the petitioner's Application For Further Appellate Review (App. P. 24).

JURISDICTION

February 22, 1999, the Massachusetts Judicial Court denied the petitioner's Application For Further Appellate Review.

This Court's jurisdiction is invoked under 28 United States Code.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

"cannot be deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment to the United States Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the law".

THE UNITED STATES INTERNAL REVENUE CODE IS INVOLVED

The respondent, Edith Tabachnick removed 1.6 million dollars in items from the Estate of David Miller causing a monetary loss to the Internal Revenue Service.

STATEMENT OF THE CASE

The respondent, Edith Tabachnick broke into the residence of the late David Miller after his funeral.

She removed items belonging to the petitioner in the amount of Two Hundred Thousand Dollars ($250,000.00).

In addition, she removed other items from the estate in the amount of over a 1.6 million dollars along with a copy of David Miller's will.

The acts of the respondent and her accomplices not only caused monetary losses to the petitioner, the Internal Revenue Service and the Commonwealth of Massachusetts Department of Revenue also sustained monetary losses.

The respondent and her accomplices removed 1.6 million dollars from the Estate of David Miller tax free.

Petitioner, Gertrude Davis Gorod, is a niece to the deceased David Miller.

The petitioner is a senior citizen and has been victimized by the respondent Ms. Tabachnick.

The petitioner was compelled to file a legal action in the Middlesex Superior Court in Cambridge, Massachusetts in order to recover her losses.

February 18, 1997, Gorod filed her Complaint in the Middlesex Superior Court (APP. P. 1).

February 20, 1997, Tabachnick was served a copy of Complaint and Summons (APP. 3).

Respondent, Tabachnick did not answer the petitioner's Complaint within the twenty days as prescribed by law.

March 17, 1997, Gorod filed Default and Judgment Against Defendant, Edith Tabachnick for failure to answer petitioner's Complaint(App. 5).

Petitioner scheduled the Court to hear the above document on the 28th day of May 1997 along with Motion For Sanctions Against Attorney Paul M. Derby (APP. 7), Motion Compelling Deposition of Edith Tabachnick To Answer All Questions and Costs (App. P. 11), Judgment Against the Defendant Edith Tabachnick for failure to produce requested documents and Attorney Joseph S. Provanzano instructing defendant Tabachnick not to answer questions (App. P. 15). Tabachnick's refusal to Answer plaintiff's Interrogatories.

May 28, 1997, Judge Zobel did not rule on any documents that the petitioner scheduled to be heard (APP. 20). Judge Zobel dismissed the action (App. 20).

The action was appealed to the Massachusetts Appeals Court. The Court upheld the lower court's decision (APP. 22).

The action was appealed to the Massachusetts Supreme Judicial Court For Further Appellate Review this request was denied (APP. 24).

Now the issues are before this Honorable Court to grant a Petition For Writ Certiorari.

ARGUMENT

REASONS FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED TO RESOLVE A NOVEL ISSUE INVOLVING LOSSES OF INHERITANCE TAXES FROM BOTH THE UNITED STATES GOVERNMENT AND THE COMMONWEALTH OF MASSACHUSETTS

Did the respondent, Edith Tabachnick have the right to break into the residence of the late David Miller after his funeral?

Did she have the right to remove items in the amount of over 1.6 million dollars belonging to the Estate of David Miller?

If, Tabachnick did not steal these items there would have been an estate tax due to both the United States Government and the Commonwealth of Massachusetts.

The Court erred in failing to address these novel and vital issues.

II. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER FROM BEING DEPRIVED OF HER CONSTITUTIONAL RIGHTS AS SET FORTH IN THE UNITED STATES CONSTITUTION

May 28, 1997, the petitioner scheduled a hearing as prescribed by Massachusetts General Laws.

This hearing was to be heard and the court was to rule on the Petitioner's following Motions:

(1) Default and Judgment For Failure to Answer Petitioner's Complaint (APP. 5). The Court did not rule on this Motion and Tabachnick never answered the Petitioner's Complaint.

(2) Motion For Sanctions Against Attorney Paul M. Derby (APP. 7). The Court did not rule on this Motion and attorney Paul M. Derby got away with committing perjury, violations of the Massachusetts Canon Rules and Attorney's Oath.
(3) Motion Compelling Deposition of Edith Tabachnick To Answer All Questions and Costs since at the original deposition she refused to answer the questions asked to her and her attorney Joseph S. Provanzano instructed her not to answer the questions and refused to produce requested documents (App. P. 13). Petitioner paid a gross amount of money to the reporter and the petitioner did not receive any discovery which she was entitled to under the Massachusetts Rules of Civil Procedure. The Court did not rule on this Motion. Respondent, Tabachnick refused to answer petitioner's interrogatories also the Court did not rule on that issue.

The United States Constitution Amendment V: states in pertinent part: "cannot be deprived of life, liberty, or property, without due process of law.

The United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges nor shall any State deprive any person of life,

liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

The petitioner was wilfully denied discovery.

Petitioner was deprived of due process of law and equal protection of the law as her property was taken away from her without upholding her Constitutional Rights as set forth in Amendments V & XIV of the United States Constitution.

III. CERTIORARI SHOULD BE GRANTED TO SAVE THE COMMONWEALTH OF MASSACHUSETTS' JUDICIAL SYSTEM FROM FAILURE

The Massachusetts Judicial System is heading for disaster.

Commonwealth of Massachusetts Superior Court Department of the Trial Court Civil Action, Middlesex County Summons states in pertinent part: "an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint." (App. P. 3)

The respondent never answered the Petitioner's complaint, although petitioner filed Judgment Against the Respondent, Tabachnick. The Court defied its own law and did nothing.

Pursuant to Massachusetts General Laws Chapter 231 § 61, Gorod served upon Tabachnick and filed in the Court Interrogatories Propounded by Gorod to be answered by Tabachnick, how-

ever, she did not answer the interrogatories.

Gorod filed Motion To Compel the Answers of her interrogatories.

The Court defied its own law and did nothing.

Pursuant to Rule 30 of the Massachusetts Rules of Civil Procedure Gorod served upon the respondent and her attorneys Joseph S. Provanzano and Paul M. Derby Notice of Taking Deposition of Edith Tabachnick and Duces Tecum (App. P. 13)

Tabachnick refused to answer the petitioner's questions and was instructed by her attorney not to answer the appellant's questions and refused to produce requested documents.

The Court defied its own law and did nothing.

IN, LLOYD v. CESSNA AIRCRAFT CO.74 F.R.D. 518 (1977), at the taking of a deposition, the witness will be examined and cross-examined by the counsel for the parties in the same fashion as at a trial, with one important exception. If there is objection to a question, the reporter will simply note the objection in the transcript and the witness will answer the question despite the objection **SEE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL CIO, AND ITS LOCAL v.WESTINGHOUSE CORPORATION 91 F.R,D 277 (1981).**

If anything, interference with the access to witnesses it is worse since it presents a graver threat to the adversary system we depend on for the fair resolution of disputes, **SHAPIRO v. FREEMAN 38 F.R.D. 308 (1965)** attorney had no right

to instruct the deponent not to answer **SHAPIRO v. FREEMAN (SUPRA)** attorney continued to obstruct and frustrate the deposition by advising, instructing, the deponent not answer questions. If attorney believed the question to be without the scope he should have done nothing more than state his objections. It is not the prerogative of counsel, the the court, to rule on objections. Indeed, if a counsel were to rule on the propriety of question, oral examinations would be quickly reduced to an exasperation cycle of answerless inquiries and court orders **SHAPIRO v. FREEMAN (SUPRA).**

HICKMAN v. TAYLOR 507 67S.Ct at 302 the deposition discovery rules are to be accorded a broad and liberal treatment, **ROSE v. BOURNE INC.** 15 F. R.D. 362, 363 (S.D.N.Y. 1953), **MORRISON EXPORT Co. v. GOLDSTONE** 12 F.R.D. 258, 259 (S.D.N.Y. 1952). **SIEGEL v. YATES** 11 F.R.D. 129, 130 (S.D. N.Y. 1951), **ROSE SILK MILLS, INC. v. INSURANCE CO. OF NORTH AMERICAN** 29 F.Supp. 504, 505, S,D. N.Y. (1939).

BANCO NACIONAL DE CREDITO EJIDAL, S.A.v. BANK OF AMERICAN NATIONAL TRUST & SAVING ASSOC IATION 11 F.R.D 497 (N.D. Cal (1951) attorney should have done nothing more than state his objections. **DELLEFIELD v. BLOCKDEL REALTY CO.** 40 F. Supp. 212 (S.D.N.Y 1941).

The court failed to place sanctions against Joseph S. Provanzano for his misconduct, however, the court defied the laws of discovery.

MASSACHUSETTS DECLARATION OF RIGHTS: ARTICLE XI: "Remedy by recourse to the laws: obtaining of right and justice, completely and promptly: "Every subject of the Commonwealth ought to find a certain remedy, by have recourse of the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it: Completely and without any denial: promptly, and without delay: conformably to the laws".

The Court defied its own above-cited law and did nothing.

This action involves an unlawful violation of a financial exploitation upon Gorod by Tabachnick which is covered for Gorod's protection under the Massachusetts General Laws Chapter 19A §14 which states in pertinent part: **FINANCIAL EXPLOITATION" "an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, which gain would otherwise benefit the elderly".**

Gorod is an elderly person and is a victim of "Financial Exploitation" in the hands of the respondent Tabachnick.

Tabachnick took $250,000.00 of items which caused a substantial monetary and property loss to the petitioner, Gorod.

The court defied its own law and did nothing.

If, the Commonwealth of Massachusetts' judicial system is not put on track shortly, Mass. will be a state that justice does not exist.

IV. CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE INFERIOR COURTS HAVE A JUDICIARY DUTY TO DETERMINE WHO ARE LEGAL/NOT LEGAL HEIRS TO ESTATES

The petitioner Gorod is a legal heir to the Estate of David Miller, and items belonging to her were stolen by the respondent from the residence of David Miller.

The respondent, Tabachnick is posing as an heir to the Estate of David Miller, the fact, of the matter is that she is nothing by an impostor who in reality is a member of the Church of Scientology Group.

The issue of whether the respondent is a legal/not a legal heir to the Estate of David Miller is a issue brought before the inferior Courts, however, the inferior courts failed to address this vital issue.

This is a serious issue for the inferior courts to address from the outset as it will stop impostors from filing frivolous actions to steal monies from legal heirs and depriving the United States Government and State Governments from obtaining Inheritance Taxes.

The respondent and her attorneys Derby and Provanzano are also attempting to steal the legal heirs Real Estate inheritance from them.

If, issue of whether respondent is a legal/not legal heir was address at this point. It would have stopped continuing frivolous actions by the respondent's attorneys Derby and Provanzano.

V. CERTIORARI SHOULD BE GRANTED WHEN THE MASSACHUSETTS INFERIOR COURTS ERRED IN ITS DECISION

The inferior courts erred in its decision and and this decision is fortified that it is a bad decision when it allowed $1,000.00 legal fees to the respondent in addition to the $250,000.00 in items stolen by the respondent along with respondent's attorney Provanzano and Derby acting in bad faith, lied and committed perjury before the courts.

Petitioner is a senior citizen and unemployed.

Petitioner has spent her life savings of $16,000.00, in attorneys's fees to defend continuing frivolous actions by five attorneys for the respondent.

Now because of lack of funds petitioner is compelled to proceed pro se.

Petitioner just does not have any funds, therefore, she is unable and will not be able to pay any legal fees to the respondent.

The inferior courts erred in violating petitioner's Constitutional Rights of due process of law and equal protection of the law.

The inferior courts deprived the petitioner of every right to discovery even the right to depose the respondent when she refused to answer questions and her attorney provanzano instructed her not to answer the question which is strictly a obstruction of justice and not allowed by the courts. SEE **JONES V. CLINTON** L.R.C-94-290 United States District Court of Arkansas "No one is exempt from being deposed, even though he may be president

of the United States as no one is above the law.

The petitioner was deprive of her right for a trial by jury whereby witnesses would have testified to the fact, that they were fully aware that Mr. Miller had made a Will and were told by Mr. Miller what was going to be left to whom.

The cause of action is clearly stated in Gorod's Complaint, moreover, where, as here the petitioner is proceeding pro se, the Complaint and other factual allegations should be read liberally and by less stringent than formal pleadings drafted by lawyers **SEE HUGHES v. ROWE, 449 U.S. 5,9 (1980).**

Failure of the Complaint to set forth specific facts to support its general allegation was not sufficent ground for dismissal of the suit, civil procedure does not require to set out in detail the facts upon which it basis its claim **CONLEY v. GIBSON 355 U.S. 14. IN, CF. MATY v. GRASSELLI CHEMICAL CO., 303 U. S. 197,** The Court rejects the approach that pleadings is a game of skill in which one misstep may be decisive to the outcome and accept the principle that the purpose of pleadings is to facilitate a proper decision on the merits. **SEE LECLAIR v. SILBERLINE 379 Mass 21 at 23** the evidence must be examined in light most favorable to the plaintiff. **IN, HAINES v. KERNER 404 U.S. 519** the court should be lenient with the plaintiff who is pro se.

Petitioner, Gorod suffered a miscarriage of justice, therefore, for the sake of justice this error should be corrected.

VI. CERTIORARI SHOULD BE GRANTED WHEN THE PUBLIC INTEREST WILL BE IN JEOPARDY IF THE MASSACHUSETTS COURT'S DECISIONS ARE LEFT UNDISTURBED

The Public Interest will be deeply involved if the decisions of the inferior courts are not vacated.

The inferior court's decision left undisturbed will jeopardize the complete judicial system.

Complaints will not have to be answered, interrogatories will go unanswered and depositions will be interrupted by attorneys telling their clients, "don't answer that question".

The bottom line is the rights to due process of law, and equal protection of the law as set forth in the United States Constitution will be destroyed.

CONCLUSION

WHEREFORE, Petitioner, Gertrude Davis Gorod respectfully prays that a Writ Of Certiorari issue to review the decision of the inferior Massachusetts Court in order to correct the miscarriage of justice that was inflicated upon her and protect the public interest.

Respectfully submitted,

Gertrude Davis Gorod

Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148
(781 (322-8223)

APP. 1

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
CIVIL ACTION
NO. 9700914

GERTRUDE DAVIS GOROD, Plaintiff

vs.

EDITH TABACHNICK, Defendant

COMPLAINT

Parties

1) Plaintiff Gertrude Davis Gorod 371 Bryant Street Malden, Massachusetts County of Middlesex.

2) Defendant Edith Tabachnick 122 Maple Street Malden, Massachusetts County of Middlesex.

Facts

3) Plaintiff is a senior citizen and has been victimized by the defendant.
4) Defendant has taken items from the plaintiff valued at $250,000.00.
5) Defendant was informed on several occasions to return these items.
6) Defendant has refused to return these items, compelling the plaintiff to take this action.

APP. 2

Cause of Action

7) Defendant used financial exploitation upon the plaintiff causing the plaintiff substantial monetary and property loss upon an elderly person.

Relief from the Court

A) Wherefore, the plaintiff requests all items be returned to the plaintiff.

B) All legal costs and legal fees, and any other relief the court deems appropriate.
The plaintiff requests trial by jury.

By,

s/Gertrude Davis Gorod,
Plaintiff
371 Bryant Street
Malden, Ma 02148

APP. 3

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION
No. 9700914

Gertrude Davis Gorod, Plaintiff

v.

Edith Tabachnick, Defendant

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon Gertrude Davis Gorod, plaintiff whose address is 371 Bryant Street Malden, Massachusetts 02148 an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Cambridge, Massachusetts either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff

which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Robert A. Mulligan, Esquire at Cambridge the 18th day of February 1997.

s/ Edward J. Sullivan,
Clerk

PROOF OF SERVICE OF PROCESS

Middlesex county, Office of the Sheriff, Civil Process Division, P.O. Box 41080, Cambridge, Ma 02141-1819 547 1171 Middlesex, ss.

February 21, 1997

I hereby certify and return that on 02/20/97, at 1:50PM I served a true and attested copy of the summons and complaint in this action in the following manner To Wit, by leaving at the last and usual place of abode of TABACHNICK, EDITH, 122 MAPLE STREET, MALDEN, MA Fees: Service $35.00, Total Fees $35.00.

DEPUTY SHERIFF

APP. 5

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT
CIVIL ACTION
NO. 9700914

GERTRUDE DAVIS GOROD,
Plaintiff

vs.

EDITH TABACHNICK,
Defendant

DEFAULT AND JUDGMENT AGAINST DEFENDANT EDITH TABACHNICK

Now comes the plaintiff, Gertrude Davis Gorod, in the above-cited action and moves the Court to order a default and judgment against the defendant, Edith Tabachnick for failure to answer the plaintiff's Complaint within twenty days after service of summons and copy of Complaint.

MEMORANDUM IN SUPPORT OF DEFAULT AND JUDGMENT AGAINST DEFENDANT EDITH TABACHNICK

February 20, 1997, the defendant Edith Tabachnick was served a summons and Complaint in this action by the Middlesex County Deputy Sheriff.

The defendant, Edith Tabachnick failed to answer the plaintiff's Complaint within the twenty days as prescribed by law.

Therefore, the plaintiff requests the Court to order a default and judgment against Edith

Tabachnick in the amount of $250,000.00, plus court and sheriff costs and any other relief the court deems appropriate.

Based on the foregoing reasons the plaintiff moves that her Motion For Default and Judgment will be allowed,

By,
S/ Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

APP. 7

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. SUPERIOR COURT
CIVIL ACTION
NO. 9700914

GERTRUDE DAVIS GOROD, Plaintiff)

VS.

EDITH TABACHNICK, Defendant)

MOTION FOR SANCTIONS AGAINST ATTORNEY PAUL M. DERBY

Now comes the plaintiff, Gertrude Davis Gorod, in the above-cited action and moves the Court to place Sanctions Against Paul M. Derby for committing perjury on this certificates of Services.

MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS AGAINST ATTORNEY PAUL M. DERBY

Paul M. Derby committed perjury when he under oath did the following:

"I, Paul M. Derby, hereby certify that on April 4, 1997, I served upon the Plaintiff, Gertrude Davis Gorod, the attached Notice of Deposition, by delivering to her by first class mail at: 371 Bryant Street, Malden, Ma 02148" signed Paul M. Derby. Plaintiff Exhibit "A"

affixed hereto:

This document was not mailed on April 4, 1997. Plaintiff's Exhibit "B" affixed hereto clearly shows that this document was not mailed on April 4, 1997.

Paul M. Derby committed perjury when he under oath did the following:

"I, Paul M. Derby, hereby certify that on April 4, 1997, I served upon the Plaintiff, Gertrude Davis Gorod the attached: Defendant's Interrogatories to the Plaintiff, Defendant's Request For admissions, by delivering to her first class mail at: 371 Bryant Street, Malden, Ma 02148 signed Paul M. Derby" Plaintiff's Exhibit "C" affixed hereto:

This document was not mailed on April 4, 1997. Plaintiff's Exhibit "D: affixed hereto: Clearly shows that this document was not mailed on April 4, 1997.

Therefore, based on the foregoing facts and evidence the plaintiff moves the court to place sanctions against Paul M. Derby for committing perjury.

By,
S/Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

CERTIFICATE OF SERVICE

I, Paul M. Derby, hereby certify that on April 4, 1997, I served upon the Plaintiff, Gertrude Davis Gorod, the attached Notice of Deposition, by delivering to her by first class mail at: 371 Bryant Street, Malden Ma 02148

S/ Paul M. Derby

PLAINTIFF'S EXHIBIT "A"

Law Offices of
Joseph S. Provanzano
Provanzano & Associates
16 Bourbon Street Suite C
Peabody, Massachusetts 01960-1338

POSTMARK DATE 5 Apr. 1997

Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

PLAINTIFF'S EXHIBIT "B"

CERTIFICATE OF SERVICE

I, Paul M. Derby, hereby certify that on April 4, 1997, I served upon Plaintiff, Gertrude Davis Gorod, the attached Defendant's interrogatories to plaintiff, Defendant's Reguest for admissions, by delivering to her by first class mail at: 371 Bryant Street, Malden, Ma 02148.

S/ Paul M. Derby

PLAINTIFF'S EXHIBIT "C"

APP. 10

Law Offices of
Joseph S. Provanzano
PROVANZANO & ASSOCIATES
16 Bourbon Street Suite C
Peabody, Massachusetts 01960-1338

POSTMARK DATE 5 Apr. 1997

Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

PLAINTIFF'S EXHIBIT "D"

APP. 11

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION
No. 9700914

GERTRUDE DAVIS GOROD,
Plaintiff

vs.

EDITH TABACHNICK,
Defendant

PLAINTIFF'S MOTION COMPELLING DEPOSITION OF DEFENDANT EDITH TABACHNICK COMPELLING HER TO ANSWER ALL QUESTIONS AND COSTS

Now comes the plaintiff, Gertrude Davis Gorod in the above-cited action and requests the court to compel the defendant to be deposed and compelled to answer all questions.

The defendant is to pay the cost of this deposition.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION COMPELLING DEPOSITION OF DEFENDANT EDITH TABACHNICK COMPELLING HER TO ANSWER ALL QUESTIONS AND COSTS

Defendant was duly notified of the taking of her deposition and Duces Tecum Plaintiff's Exhibit "A" affixed hereto:

Edith Tabachnick refused to answer plaintiff.

In, addition Mr. Provanzano embarrassed, harassed made defamatory remarks regarding the plaintiff. After the plaintiff was compelled to stop the deposition, Mr. Provanzano ordered her to

leave the building.

Plaintiff would ask the defendant a question and Mr. Provanzano would make a speech after approximately every question which was completely our of order.

He continuously argued with the plaintiff being despicable and obnoxious, therefore, plaintiff was compelled to stop the deposition.

The plaintiff is under the care of a Health Provider and Mr. Provanzano's misconduct caused her additional pain and suffering.

Plaintiff requests the Court to Compel the defendant Edith Tabachnick to be deposed and compelled to answer all questions and pay for the costs for the deposition.

Based on the foregoing reasons the plaintiff moves the court to allow her motion.

By,

S/_____
Gertrude Davis Gorod, Plaintiff
371 Bryant Street
Malden, Ma 02148

NOTICE OF MOTION

Plaintiff's Motion Compelling Deposition of Defendant Edith Tabachnick compelling her to answer all questions and costs will be heard at the Middlesex Superior Court in Cambridge, Massachusetts on the 28th day of May 1997, at 2:00 P. M.

S/ Gertrude Davis Gorod

APP. 13

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS	SUPERIOR COURT CIVIL ACTION NO. 9700914	
GERTRUDE DAVIS GOROD, Plaintiff vs. EDITH TABACHNICK, Defendant	)	NOTICE OF TAKING DEPOSITION OF EDITH TABACHNICK AND DUCES TECUM

Pursuant to Rule 30 of the Massachusetts Rules of Civil Procedure you (Edith Tabachnick) hereby ordered to appear at 10:00 A.M. on April 25, 1997, at Doris O. Wong & Associate 50 Franklin Street Boston, Massachusetts to take your deposition upon oral examination.

The oral examination will continue from day to day until completed.

DECUM TECUM

You are to bring with you the following:

(1) All itemized lists of items that you took from the Estate of David Miller.

(2) All corespondence, notes, memorandums etc., that you wrote or received from individuals pertaining to the items you took from the Estate of David Miller.

(3) All notes of telephone conversation you had with individuals pertaining to the items you took from the Estate of David Miller.

(4) All Photographs that you have taken from the Estate of David Miller, including Real Estate and Personal Effects, etc.

(5) All documents that you will present as evidence during time of trial.

Plaintiff will reproduce these documents at time of deposition.

By,
S/ Gertrude Davis Gorod, Plaintiff
371 Bryant Street
Malden, Ma 02148

CERTIFICATES OF SERVICE

I, Gertrude Davis Gorod certify that I mailed a true copy of Notice of Taking Deposition of Edith Tabachnick and Duces Tecum to Joseph S. Provanzano and Paul M. Derby Provanzano & Associates 16 Bourbon Street Peabody, Ma 01960 postage prepaid.

DATE 4-14-97 S/Gertrude Davis Gorod

I, Gertrude Davis Gorod certify that I mailed a true copy of Notice of Taking Deposition of Edith Tabachnick 122 Maple Street Malden, Ma 02148 postage prepaid.

DATE 4-14-97 S/ Gertrude Davis Gorod

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 9700914

GERTRUDE DAVIS GOROD,
Plaintiff

vs.

EDITH TABACHNICK,
Defendant

JUDGMENT AGAINST THE DEFENDANT EDITH TABACHNICK

Now comes the plaintiff, Gertrude Davis Gorod, in the above-cited action and moves the Court to Order Judgment Against the Defendant Edith Tabachnick. (1) The defendant and her attorney Joseph S. Provanzano acted in bad faith during the taking of the defendant's deposition. (2) Defendant failed to produce requested documents to the plaintiff. (4) Defendant's attorney Joseph S. Provanzano interfered with the plaintiff's right to unobstructed access to the deponent instructing her not to answer questions.

MEMORANDUM IN SUPPORT OF JUDGMENT AGAINST EDITH TABACHNICK

This request for Judgment Against The defendent Edith Tabachnick arises out of the defendant acting in bad faith during the taking of her deposition, failure to produce requested documents and defendant's attorney Joseph S. Provanzano interfered with the plaintiff's rightto

unobstructed access to the defendant instructing her not to answer questions causing the plaintiff to stop the deposition after a period of twenty-seven minutes.

April 14, 1997, the plaintiff served upon both the defendant, Edith Tabachnick and the defendant's attorneys Joseph S. Provanzano and Paul Derby, Notice of Taking Deposition of Edith Tabachnick and Duces Tecum to appear for her deposition on April 25, 1997, Plaintiff's Exhibiit "A" affixed hereto:

The defendant and her attorney, Joseph S. Provanzano acted in bad faith. The defendant failed to answer questions and just sat there saying nothing in addition she was also instructed by Mr. Provanzano not to answer questions.

Mr. Provanzano objected to forty questions which went unanswered by the defendant.

Defendant failed to produce documents as requested by the plaintiff.

Mr. Provanzano obstructed justice, interfered with the plaintiff's right to depose the defendant, and continuously instructed her not to answer questions.

Mr. Provanzano's forty objections are listed below which appear in the defendant's deposition Plaintiff's Exhibit "B"

1) Page 4 lines 4 thru 9
2) Page 4 lines 13 thru 18
3) Page 4 lines 24 thru page 5 line 7
4) Page 6 lines 3 thru line 6
5) page 6 lines 8 thru line 12

6) Page 7 lines 2 thru line 7
7) Page 8 lines 6 thru line 11
8) Page 8 line 17
9) Page 9 lines 16 thru page 10 line 1
10) Page 10 lines 12 thru line 16
11) Page 10 lines 19 thru line 23
12) Page 11 lines 13 thru line 16
13) Page 12 lines 11 thru line 14
14) Page 12 lines 22 thru page 13 line 2
15) Page 13 lines 6 thru line 8
16) Page 14 lines 1 thru line 6
17) Page 14 lines 8 thru line 16
18) Page 15 lines 5 thru line 15
19) Page 16 lines 2 thru line 6
20) Page 16 lines 9 thru line 13
21) Page 17 lines 2 thru line 4
22) Page 17 lines 8 thru line 11
23) Page 17 lines 22 thru line 23
24) Page 19 lines 7 thru line 13
25) Page 19 lines 15 thru line 20
26) Page 19 lines 23 thru page 20 line 6
27) Page 20 lines 11 thru line 17
28) Page 21 lines 7 thru line 9
29) Page 21 lines 12 thru line 13
30) Page 21 lines 16 thru line 22
31) Page 22 lines 1 thru line 2
32) Page 22 lines 6 thru line 8
33) Page 22 lines 13 thru line 15
34) Page 22 lines 17 thru line 23
35) Page 23 lines 3 thru line 10
36) Page 23 lines 19 thru line 21
37) Page 23 lines 24 thru page 24 line 7
38) Page 24 lines 10 thru line 17
39) Page 25 lines 1 thru line 8
40) Page 25 lines 13 thru line 15

IN, LLOYD v. CESSNA AIRCRAFT CO. 74 F.R.D. 518 at the taking of a deposition, the witness will be examined and cross-examined by the counsel for the parties in the same fashion as a

trial with one important exception. If there is objection to a question, the reporter will simply note the objection in the transcript and the witness will answer the question despite the objection, SEE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, AND ITS LOCAL 186 v. WESTINGHOUSE ELECTRIC CORPORATION 91 F.R,D 277.

If anything, interference with the access to witnesses is worse since it presents a graver threat to the adversary system we depend on for fair resolution of disputes, SHAPIRO v. FREEMAN 38 F.R.D 308 attorney had no right to instruct the deponent not to answer SHAPIRO v.FREEMAN (SUPRA) attorney continued to obstruct and frustrate the deposition by advising, instructing, the deponents not answer questions. If attorney believed the question to be without the scope he should have done nothing more than state his objections. It is not the prerogative of counsel, but the court, to rule on objections. Indeed, if counsel were to rule on the propriety of question, oral examinations would be quickly reduced to an exasperation cycle of answerless inquiries and the court orders SHAPIRO v. FREEMAN (SUPRA).

HICKMAN v. TAYLOR 507 67 S. Ct at 302 the deposition discovery rules are to be accorded a broad and liberal treatment, ROSE v. BOURNE INC. 15 F.R.D. 362, 363 (S.D.N.Y),MORRISON EXPORT v. GOLDSTONE 12 F.R,D. 258, 259, (S.D.N.Y).

SEGAL v. YATES, 11 F.R.D 129,130 (S.D.N.Y.), ROSE SILK MILLS, INC. v. INSURANCE CO. OF NORTH AMERICAN 29 F. Supp. 504, 505 (S.D.N.Y.).

BANCO NACIONAL DE CREDITO, S.A. v. BANK OF AMERICAN NATIONAL TRUST & SAVINGS ASSOCIATION 11 F.R.D. 497 (N.D.Cal.) attorney should have done nothing more than state his objections, DELLEFIELD v. BLOCKDEL REALTY CO 40 F. Supp. 212 (S.D.N.Y.).

Therefore, based on the foregoing facts and evidence the plaintiff moves the Court for sanctions against the defendant in ordering Judgment Against the Defendant Edith Tabachnick And Costs which the Court deems appropriate.

By: S/Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

APP. 20

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

DOCKET MIC97-00914A

RE: Gorod v. Tabachnick

TO: Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

NOTICE OF DOCKET ENTRY

You are hereby notified that on 05/28/97 the following entry was made on the reference docket:

Endorsement on Paper #1 "Complaint", is: Memorandum: At a lengthy hearing on the record it became clear to the court that at best (a skimpy best, at that) Plff's claim rests on a belief that her uncle, David Miller bequeathed her certain property. The belief stems from her insistence that her uncle, in her presence wrote out and signed a list of objects which he was "leaving" to her. Before me, Plff conceded that no one else was present. Thus the document was not as of that time a testamentary instrument: nor does plff have any evidence (beyond her recollection) of its existence, provenance or contents. The merits of the case are not to be measured by the vehemence of Plff's insistence of Deft's iniquity. Judgment to enter forthwith: Complaint Dismissed with Prejudice. (Zobel, J.) notices sent along with

copies of endorsement 6/11/97

DATE: 11th day of June, 1997

EDWARD J. SULLIVAN
Clerk of the Courts

By:
George Loiacono, Asst Clerk

SPECIAL NOTICE BY THE PETITIONER

NO COPIES OF ENDORSEMENT WAS MAILED TO THE PETITIONER IN ADDITION THERE WAS NO SEAL ON THE COURT'S DECISION.

APP. 22

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

97-1825

GERTRUDE DAVIS GOROD

VS.

EDITH TABACHNICK

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

In a hearing on the plaintiff's complaint before a Superior Court judge, the pro se plaintiff admitted that her claim for items allegedly taken by the defendant was based upon a "will" which she could not produce (tr. 8-9) and which the alleged testator had drafted and executed in her presence as the only witness. (Tr. 31-32) See G.L.c191, § 1 (requiring two or more witness) See als Ryan v. Ryan, 419 Mass. 86,90 (1944) (oral promises unenforceable). On this basis, the judge concluded that the plaintiff's statement demonstrated no viable claim, and dismissed her complaint with prejudice. (a.57)Cf. Wornat Dev. Corp. v. Vakalis, 403 Mass. 340, 348 (1988).

On appeal, the plaintiff has not shown that any reasonable view of the facts and rational inferences supports her claims See Hubert v. Melrose-Wakefield Hosp. Assn.40 Mass. App. Ct. 172, 176 (1996). In view of this, we need not reach other arguments on appeal.

The defendant-appellee's request for an award of attorney's fees and costs pursuant to

fees and pursuant to M.R.A.P. as amended in the amount of $1000.

Judgment affirmed.
By the Court(Brown, Porada & Greenberg, J.

S/Ashley Ahern Clerk

Entered: January 21, 1999

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

RE: Docket No. FAR-10380

GERTRUDE DAVIS GOROD
vs.
EDITH TABACHNICK

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that the above-captioned Application for further Appellate Review has been considered by the Court and is denied.

Jean M. Kennett, Clerk

DATED: FEBRUARY 22, 1999